

2023 No. 80

SOCIAL SECURITY

**The Social Security (Habitual Residence and Past Presence)
(Amendment) Regulations (Northern Ireland) 2023**

Made - - - - *17th May 2023*

Coming into operation - *18th May 2023*

The Department for Communities(a) makes the following Regulations in exercise of the powers conferred by sections 64(1), 70(4), 71(6), 122(1)(a) and (d), 133(2)(a) and 171(3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b), paragraph 11(2) of Schedule 1 to the Jobseekers (Northern Ireland) Order 1995(c), and now vested in it(d), sections 1(5)(a) and 19(1), (2)(a) and (3) of the State Pension Credit Act (Northern Ireland) 2002(e), paragraph 5 of Schedule 2 to the Welfare Reform Act (Northern Ireland) 2007(f) and Articles 9(5)(a), 48(1), 82(3), 97(1) and 99(1)(a) of the Welfare Reform (Northern Ireland) Order 2015(g).

Regulation 2 is made with the consent of the Department of Finance(h), in so far as it relates to the provisions referred to in paragraph (2)(d) and (e) of that regulation.

Citation and commencement

1. These Regulations may be cited as the Social Security (Habitual Residence and Past Presence) (Amendment) Regulations (Northern Ireland) 2023 and shall come into operation on 18th May 2023.

Amendment of income-related benefit legislation

2.—(1) In the provisions specified in paragraph (2) after sub-paragraph (zcc)(i) insert—

“(zcd)a person who was residing in Sudan before 15th April 2023, left Sudan in connection with the violence which rapidly escalated on 15th April 2023 in Khartoum and across Sudan and—

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- (a) See section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))
(b) 1992 c. 7; section 64(1) was amended by paragraph 38 of Schedule 1 to the Pensions Act (Northern Ireland) 2008 (c. 1) and paragraph 4(2) of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1)); section 122(1) was amended by Schedule 6 to the Tax Credits Act 2002 (c. 21)
(c) S.I. 1995/2705 (N.I. 15)
(d) See Article 8(b) of S.R. 1999 No. 481
(e) 2002 c. 14 (N.I.)
(f) 2007 c. 2 (N.I.)
(g) S.I. 2015/2006 (N.I. 1)
(h) See section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)); see also Article 6(b) of S.R. 1999 No. 481 and section 1(4) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))
(i) Sub-paragraph (zcc) was inserted by regulation 2(3) of S.R. 2022 No. 149 and amended by regulation 2(1) of S.R. 2022 No. 230

- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971(a);
- (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act(b); or
- (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act(c);”.

(2) Those provisions are—

- (a) regulation 21AA(4) of the Income Support (General) Regulations (Northern Ireland) 1987(d) (special cases: supplemental—persons from abroad);
- (b) regulation 85A(4) of the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(e) (special cases: supplemental—persons from abroad);
- (c) regulation 2(4) of the State Pension Credit Regulations (Northern Ireland) 2003(f) (persons not in Northern Ireland);
- (d) regulation 10(5) of the Housing Benefit Regulations (Northern Ireland) 2006(g) (persons from abroad);
- (e) regulation 10(5) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(h) (persons from abroad);
- (f) regulation 70(4) of the Employment and Support Allowance Regulations (Northern Ireland) 2008(i) (special cases: supplemental – persons from abroad).

Amendment of the Universal Credit Regulations

3. In regulation 9(4) of the Universal Credit Regulations (Northern Ireland) 2016(j) (persons treated as not being in Northern Ireland) after sub-paragraph (zc)(k) insert—

“(zd) a person who was residing in Sudan before 15th April 2023, left Sudan in connection with the violence which rapidly escalated on 15th April 2023 in Khartoum and across Sudan and—

- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971,
- (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act, or
- (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act.”.

(a) 1971 c. 77

(b) Section 2 was substituted by section 39(2) of the British Nationality Act 1981 (c. 61) and amended by S.I. 2019/745

(c) Section 3ZA was inserted by section 2(2) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c. 20)

(d) S.R. 1987 No. 459; regulation 21AA was inserted by regulation 2(3) of S.R. 2006 No. 178; relevant amending Regulations are S.R. 2021 No. 269 and S.R. 2022 Nos. 149 and 230

(e) S.R. 1996 No. 198; regulation 85A was inserted by regulation 4(3) of S.R. 2006 No. 178; relevant amending Regulations are S.R. 2021 No. 269 and S.R. 2022 Nos. 149 and 230

(f) S.R. 2003 No. 28; regulation 2 was substituted by regulation 5 of S.R. 2006 No. 178; relevant amending Regulations are S.R. 2021 No. 269 and S.R. 2022 Nos. 149 and 230

(g) S.R. 2006 No. 405; relevant amending Regulations are S.R. 2021 No. 269 and S.R. 2022 Nos. 149 and 230

(h) S.R. 2006 No. 406; relevant amending Regulations are S.R. 2021 No. 269 and S.R. 2022 Nos. 149 and 230

(i) S.R. 2008 No. 280; relevant amending Regulations are S.R. 2021 No. 269 and S.R. 2022 Nos. 149 and 230

(j) S.R. 2016 No. 216; relevant amending Regulations are S.R. 2021 No. 269 and S.R. 2022 Nos. 149 and 230

(k) Sub-paragraph (zc) was inserted by regulation 3(3) of S.R. 2022 No. 149 and amended by regulation 2(1) of S.R. 2022 No. 230

Amendment of disability and carer’s benefit legislation

4.—(1) In the provisions specified in paragraph (2)—

(a) at the end of sub-paragraph (e)(a) omit “or”;

(b) after sub-paragraph (f)(b) add—

“or

(g) leave to enter or remain in the United Kingdom granted under or outside the immigration rules, a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the person—

(i) was residing in Sudan before 15th April 2023; and

(ii) left Sudan in connection with the violence which rapidly escalated on 15th April 2023 in Khartoum and across Sudan.”.

(2) Those provisions are—

(a) regulation 9C(1) of the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976(c) (refugees and certain persons with leave to enter or remain in the United Kingdom(d));

(b) regulation 2C(1) of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(e) (refugees and certain persons with leave to enter or remain in the United Kingdom);

(c) regulation 2C(1) of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(f) (refugees and certain persons with leave to enter or remain in the United Kingdom).

Amendment of the Personal Independence Payment Regulations

5. In regulation 23A(1) of the Personal Independence Payment Regulations (Northern Ireland) 2016(g) (refugees and certain persons with leave to enter or remain in the United Kingdom(h))—

(a) at the end of sub-paragraph (e)(i) omit “or”;

(b) after sub-paragraph (f)(j) add—

“or

(g) leave to enter or remain in the United Kingdom granted under or outside the immigration rules, a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or

(a) Sub-paragraphs (c) to (e) were added by regulation 4(3)(b) of S.R. 2021 No. 269 and amended by regulation 4(2) of S.R. 2022 No. 149

(b) Sub-paragraph (f) was added by regulation 4(2)(b) of S.R. 2022 No. 149 and amended by regulation 3(1) of S.R. 2022 No. 230

(c) S.R. 1976 No. 99; regulation 9C was inserted by regulation 2(3) of S.R. 2017 No. 218; relevant amending Regulations are S.R. 2021 No. 269 and S.R. 2022 Nos. 149 and 230

(d) The heading to the provisions referred to in paragraph (2)(a) to (c) was substituted by regulation 4(2) of S.R. 2021 No. 269

(e) S.R. 1992 No. 20; regulation 2C was inserted by regulation 7(3) of S.R. 2017 No. 218; relevant amending Regulations are S.R. 2021 No. 269 and S.R. 2022 Nos. 149 and 230

(f) S.R. 1992 No. 32; regulation 2C was inserted by regulation 8(3) of S.R. 2017 No. 218; relevant amending Regulations are S.R. 2021 No. 269 and S.R. 2022 Nos. 149 and 230

(g) S.R. 2016 No. 217; regulation 23A was inserted by regulation 15 of S.R. 2017 No. 218; relevant amending Regulations are S.R. 2021 No. 269 and S.R. 2022 Nos. 149 and 230

(h) The heading to regulation 23A was substituted by regulation 4(2) of S.R. 2021 No. 269

(i) Sub-paragraphs (c) to (e) were added by regulation 4(3)(b) of S.R. 2021 No. 269 and amended by regulation 5(2) of S.R. 2022 No. 149

(j) Sub-paragraph (f) was added by regulation 5(2)(b) of S.R. 2022 No. 149 and amended by regulation 3(1) of S.R. 2022 No. 230

remain in the United Kingdom in accordance with section 3ZA of that Act, where C—

- (i) was residing in Sudan before 15th April 2023; and
- (ii) left Sudan in connection with the violence which rapidly escalated on 15th April 2023 in Khartoum and across Sudan.”.

Sealed with the Official Seal of the Department for Communities on 17th May 2023

(L.S.)

David Tarr

A senior officer of the Department for Communities

The Department of Finance hereby consents to regulation 2, in so far as it relates to the provisions referred to in paragraph (2)(d) and (e) of that regulation

Sealed with the Official Seal of the Department of Finance on 17th May 2023

(L.S.)

Patrick Neeson

A senior officer of the Department of Finance

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 1 provides for citation and commencement.

Regulations 2 and 3 enable certain persons to access income-related benefits upon arrival in Northern Ireland from Sudan provided they meet the other relevant entitlement conditions.

Those regulations amend the Income Support (General) Regulations (Northern Ireland) 1987, the Jobseeker’s Allowance Regulations (Northern Ireland) 1996, the State Pension Credit Regulations (Northern Ireland) 2003 (“the State Pension Credit Regulations”), the Housing Benefit Regulations (Northern Ireland) 2006, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006, the Employment and Support Allowance Regulations (Northern Ireland) 2008 and the Universal Credit Regulations (Northern Ireland) 2016 (“the Universal Credit Regulations”) - “the income-related benefit regulations”.

The income-related benefit regulations provide that a person is ineligible for benefit where he or she is a “person from abroad”, “a person not in Northern Ireland” (for the purposes of the State Pension Credit Regulations), or “a person treated as not being in Northern Ireland” (for the purposes of the Universal Credit Regulations); that is to say where the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, subject to a list of exemptions.

Regulations 2 and 3 insert a new category into the list of persons who are exempted from having to satisfy the habitual residence test. Those persons are those who were residing in Sudan before 15th April 2023, who left Sudan in connection with the violence which rapidly escalated on 15th April 2023 in Khartoum and across Sudan and who—

- (a) have been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971;

- (b) have a right of abode in the United Kingdom within the meaning given in section 2 of that Act; or
- (c) do not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act.

Regulations 4 and 5 enable certain persons to access disability and carer's benefits upon arrival in Northern Ireland from Sudan where they were residing in Sudan and left Sudan in accordance with the criteria above, provided they meet the other relevant entitlement conditions.

Regulation 4 amends the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976, the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 and the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 respectively, and regulation 5 amends the Personal Independence Payment Regulations (Northern Ireland) 2016, to exempt the same group of people from the past presence test. This is the test which normally has to be fulfilled in order to claim Carer's Allowance, Attendance Allowance, Disability Living Allowance and Personal Independence Payment. The past presence test normally requires that an individual has been present in Northern Ireland for a specified period of time to be eligible for those benefits. The amendments also have the effect of removing the habitual residence requirement for entitlement to disability and carer's benefits which would otherwise apply to these persons.

These Regulations make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

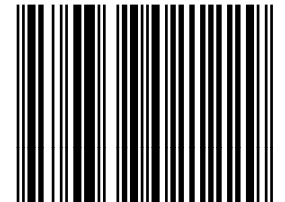
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